

# HOUSE BILL REPORT

## HB 2448

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**As Reported by House Committee On:**  
Criminal Justice & Corrections

**Title:** An act relating to excise taxation of illegal drugs and alcohol.

**Brief Description:** Imposing an excise tax on the possession of illegal drugs and alcohol.

**Sponsors:** Representatives Campbell and Conway.

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 1/17/06, 2/2/06 [DP].

**Brief Summary of Bill**

- Creates an excise tax to generate revenue for state and local law enforcement agencies for use by those agencies to investigate, combat, prevent, and reduce drug crimes, and for the General Fund.
- Imposes an excise tax on the possession of unauthorized controlled substances and illicit alcoholic beverages.
- Establishes an Unauthorized Substance Tax Account in the state treasury.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 4 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Kirby and Williams.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member and Strow.

**Staff:** Yvonne Walker (786-7841).

**Background:**

A controlled substance is generally defined as a drug, substance, or immediate precursor that is included in the Uniform Controlled Substance Act (Act) and listed in various schedules with regard to its potential for abuse.

Under the Act, it is illegal for any person to possess, sell, manufacture, or deliver controlled substances. Violations of the Act are ranked from a seriousness level I to a level III on the

Drug Offense Sentencing Grid depending upon the offense. Generally, the actual sentence a defendant receives is based upon the seriousness level of the current offense and the defendant's criminal history. The sentence can include incarceration, a fine, or both incarceration and a fine.

Persons who possess controlled substances in Washington are not subject to tax on the possession of the substance. Excise taxes are taxes that are generally imposed when a transaction occurs, such as a sale, use, first possession, or distribution, and are often based on transaction price or volume. Examples include retail sales and use taxes, business and occupation taxes, and the cigarette tax.

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### **Summary of Bill:**

An excise tax is created and imposed on any person in possession of unauthorized controlled substances or illicit alcoholic beverages. The excise tax includes the following rates:

- 40 cents for each gram of harvested marijuana stems and stalks that have been separated from and not mixed with any other parts of the marijuana plant and \$3.50 for each gram of the remaining marijuana parts;
- \$50 for each gram of cocaine;
- \$200 for each gram or \$50 for each 10 dosage units of any other controlled substance or low street-value drug (e.g., hallucinogenic, stimulant, anabolic, or depressant) that is sold by weight;
- \$200 for each 10 dosage units of any other controlled substance that is not sold by weight;
- \$31.70 for each gallon of illicit alcoholic beverages (e.g., bootleg liquor, moonshine, nontax-paid liquor, and white liquor) sold by the drink; and
- \$12.80 for each gallon of illicit alcoholic beverages not sold by the drink.

The excise tax does not apply to legal dealers who are authorized by law to possess the substance and when possession of such substances are authorized by law. In addition, the tax does not apply to the following:

- harvested mature marijuana stalks when separated from and not mixed with any other parts of the marijuana plant;
- fiber or any other product of marijuana stalks, except resin extracted from the stalks;
- marijuana seeds that have been sterilized and are incapable of germination; or
- roots of the marijuana plant.

The Department of Revenue (DOR) must issue stamps to affix to unauthorized substances to indicate payment of the required taxes. Dealers must report the taxes payable at the time and on a form prescribed by the DOR. However, dealers are not required to give their name, address, Social Security number, or other identifying information on the form. Upon payment of the tax, the DOR must issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

All law enforcement agencies must report to the DOR within 48 hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance upon which a stamp has not been affixed. The report must be in the manner required by the DOR and must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of any individual in possession of the substance and the individual's Social Security number, and any other information required by the DOR. The report must be made when the arrest or seizure involves any of the following unauthorized substances upon which a stamp has not been affixed:

- more than 42.5 grams of marijuana;
- any illicit alcoholic beverage;
- seven or more grams of any other unauthorized substance that is sold by weight; or
- 10 or more dosage units of any other unauthorized substance that is not sold by weight.

The tax imposed is payable by any dealer who possesses an unauthorized substance in this state upon which the tax has not been paid as evidenced by a stamp issued by the DOR. The tax is payable within 48 hours after the dealer acquires possession of a nontax-paid unauthorized substance, exclusive of Saturdays, Sundays, and legal holidays of this state, in which case the tax is payable on the next working day. If the tax is not paid within 48 hours, the tax will become delinquent and will accrue penalties and interest fees. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the unauthorized substance. Once the tax due on an unauthorized substance has been paid, no additional tax is due even though the unauthorized substance may be possessed by other dealers. If a dealer is found in possession of a substance taxable that does not have the appropriate tax stamp affixed, it shall be presumed the dealer has been in possession of the substance for longer than 48 hours, exclusive of Saturdays, Sundays, and legal holidays of this state.

An assessment will be brought against any dealer who possesses an unauthorized substance to which a stamp has not been affixed. The DOR shall immediately assess the tax, any applicable penalties, and interest based on any information brought to the attention of the DOR that a person is liable for unpaid tax. The DOR shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice of assessment and demand for payment shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the DOR must begin collection of the full assessment. Unless the dealer obtains a stay of collection, the DOR must treat the assessment as a jeopardy assessment and immediately proceed with collection actions.

All stamps issued and all information obtained by the DOR is confidential and, unless independently obtained, may not be used in a criminal prosecution other than a prosecution for a violation of unpaid taxes. However, the DOR may use any information collected for publishing agency statistics.

Unauthorized Substances Tax Account. The Unauthorized Substances Tax Account (Account) is created in the state treasury. All receipts from the excise tax must be deposited in the Account and may only be spent after appropriation.

Proceeds from the taxes must be applied first to costs of storing and disposing of the assets seized in payment of the assessment, which costs will be added to and become part of the assessment. From the remaining proceeds, 75 percent of the tax proceeds must be distributed to the state or local law enforcement agency that conducted the investigation of a dealer that led to the tax assessment. These proceeds are to be used by the agency solely for the purpose of investigating, combating, preventing, and reducing drug crimes. If more than one state or local law enforcement agency conducted the investigation, the DOR must determine the equitable share for each agency based on the contribution each agency made to the investigation. The DOR's determination of the equitable share for each agency will be final, and is not subject to review in an administrative or judicial proceeding. After this distribution, the Legislature may transfer the balance of tax proceeds to the General Fund for any other purpose.

A person is not immune from criminal prosecution or conviction due to voluntarily paying the required excise tax.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect on July 1, 2006.

**Testimony For:** When one looks at the costs that are created by criminals it is ironic that those costs are generally paid by hard working people. This bill would require the offender to pay for those activities. The first bill of this kind was passed in 1989 in North Carolina and that state has been collecting about \$6 million per year. Criminals cost us a great deal of money.

**Testimony Against:** Creating this tax is not going to create substantial amounts of revenue. Generally the people who are arrested for drug crimes already have their assets seized under the forfeiture statutes and whatever is left over is used to pay jail costs, restitution, defense courts, lab fees, and court fees. Many of these fees normally go unpaid.

Reports have shown that statutes that try to generate revenue such as this, just drives up the black market prices and increases the drug trade.

This bill has constitutional problems in how it defines "dealer." The bill also taxes simple possession which is a property tax and subjects the bill to challenge.

**Persons Testifying:** (In support) Representative Campbell, prime sponsor.

(Opposed) Kim Gordon, Washington Criminal Defense Lawyers.

**Persons Signed In To Testify But Not Testifying:** None.